IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8675 of 1998

With

SPECIAL CIVIL APPLICATION No.8986 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAIYED GULAMALI SHAIKH

Versus

DHIRUBHAI PANDYA

Appearance:

MR AD MITANI for the petitioner

MR VM PANCHOLI for respondents no. 1, 2 & 4

MR SV PARMAR for respondent no.3

MR HS MUNSHOW for respondent no.5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/06/2000

C.A.V.JUDGEMENT

1. In these two petitions the applications have been

made for grant of permission to amend the same as proposed therein. The applications are granted. The averments made in the draft amendment have been considered with the main matters also. Though in the applications for amendment of the Special Civil Aplicatkions, it is mentioned that the Dabhoi Municipality is regularly charging the rent at the rate of Rs.2/- per day from the petitioners and further is also mentioned that the rent receipts are collectively submitted as Annexure-B but in the Special Civil Application No. 8675/98 I do not find any receipt. In Special Civil Application No. 8986/98 there are few xerox copies of the receipts. But it is very difficult to believe what to say to accept that these relate to what the petitioners claim. In the receipts the names of the petitioners are not there. It is also not mentioned as to what for these receipts have been issued. Not only this, it is very difficult to read out therein and accept that these receipts relate to place where the petitioners are keeping their larries. Moreover, it is a disputed question of fact for which the remedy under Article 226 of the Constitution is not an appropriate remedy. On the basis of the material produced along with this application for grant of permission to amend these Special Civil Applications, it is very difficult to accept this plea of tenancy rights raised by the petitioners.

2. The learned counsel for the petitioners relying upon the following decisions (i) AIR 1998 SC 2342 (ii) 1985 2 GLR 679 (iii) 1991 (2) GLH 606 (FB) (iv) AIR 1986 SC 180 and (v) AIR 1993 Bom. 291, contended that the petitioners are earning their livelihood by running these larries, they are very poor persons and they cannot be removed from the place in dispute in such a high handed manner. To earn livelihood is a fundamental right under Article 21 of the Constitution and only after following due process of law these persons can be removed from the site in question. Lastly, it is contended that these persons are hawkers on the road side and their larries are not causing any hindrance to vehicular traffic. Carrying on this contention further the learned counsel for the petitioners submits that in line of their larries the octroi check post and police station are there. If the octroi check post and police station are not causing any traffic hazards then how can these larries can be taken to have causing any hurdles and obstruction in traffic on the road.

3. The learned counsel for the State Government contended that it is case where on the road side i.e.

public place these larries are there and to over come this difficult of conjunction and other traffic problems the Municipality has decided to remove the said larries therefrom. It has next been contended that the petitioners are ranked trespasser at the site and only on their alleged right to livelihood they cannot be allowed to continue there.

4. Shri S.V.Parmar Learned counsel for the municipality contended that this matter is squarly covered by the decision of this Court given in the Special Civil Application No. 3910/97 decided on 4.7.1997 (Coram : R.K.Abhichandani, J). The petitioners in that Special Civil Application are the persons who are also there on this very public place and in case this Court takes any different view in this matters then what is taken in that decision then, it will result in judicial discrimination. It is next contended that if this Court does not agree with the judgment delivered earlier in the identical matter, the matter may be referred to a larger bench. On merits, Shri Parmar submits that these are the cases of trespassers and number of larries are increasing as per what is given out in reply to Special Civil Application and because of the existence of these larries many fold traffic problem are being created and faced. These larries are on the public place i.e. state highway and same cannot be allowed to continue. It is not correct to contend by the petitioners that the municipality is charging any rent from these lariwalas. Existence of the octroi check post or police station or chowky it is submitted that these are to be there on the highway and petitioners who are ranked trespassers cannot take benefit of this position. Their case are not comparable with this octroi check post and the police station or chowky.

5. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties.

6. The decisions on which reliance has been placed by the learned counsel for the petitioners is hardly of any help to the petitioners in these matters. Each case has to be decided on its own facts.

7. The petitioners are larry holders and they can not stationed at one place. Larries mean these cannot be stationary, same are to hawk. Merely because the petitioners have stationed their larries for some time in this case, on the public place, it does not create any right in their favour. Before they are asked to roll

/remove their larries from this place, notice needs not to be given nor any action has to be taken under the provisions of the Public Premises (Eviction of Unauthorized Occupant) Act. From the photographs which are produced on the record for the perusal of the Court, I find that these larries are upon the public place adjacent to the State highway and certainly continuation of the same on this public place is not in the larger interest of the public of the town. It may result in traffic hazards. Merely because these larries were not asked to roll from this place for some time, there cannot be a case of creation of any lease or licence in favour of the petitioners. Otherwise also in the public place here the place adjacent to the state highway, no such lease or licence cannot be granted or createde by any Authority. These larries are meant to roll on the road. These are meant to serve public purposes and so, to roll on the road and peoples of the town get the facilities at doorstep. These cannot be compared and put at par with the permanent shops which are there in the commercial complex or established markets. The petitioners are the ranked trespassers and they cannot be allowed to station their larries at the public place in question. For removal of these ranked trespassers here in this case, the larry holders i.e. rolling shop i.e. shop on wheels, no notice was required to be given. I find sufficient merits in the contention of learned counsel for the respondent municipality that the case is squarely covered by decision given by this Court in the case of Jasabhai Jethabhai Patel and others Vs. Dabhoi Nagar Palika and others (supra). Learned counsel for the petitioner does not dispute that the petitioners in that Special Civil Application are identically situated and placed. They are there on the very public place. However learned counsel for the petitioners contends that these petitioners were not the party to that petition. I fail to see any merit in this contention. This court was of the view that the petitioners therein who are admittedly similarly situated to the petitioners in these matters have no right to remain on public place. They were held to be unauthorized occupants and encroachers on the public place. The case as presented before this Court in earlier petition that those persons may be allotted alternative accommodation has not been accepted. The petitioners have no right to continue upon the public place where they have their larries. This Court earlier found that the place in dispute is required for widening of the road. However, this Court has observed that if the petitioners therein approached the respondent for alternative site, the respondent may sympathetically consider the request and tried to accommodate if found

feasible. There is nothing on the record to show that this Court has accepted thier this resuest. No mandamus or any other writ, order or direction have been issued. In such cases if the directions are given as what it is prayed for by the learned counsel for the petitioners, it will become very difficult for the municipality to carry out the same. If we go by the facts of the petitions, indiscriminately the number of larries are increasing on the public place. It will be in this senerio very difficult for the municipality to accommodate all these persons even if some place is available with it.

7. In the result, these Special Civil Applications fail and same are dismissed. Rule discharged. Interim relief,if any, granted earlier stands vacated. No order as to costs.

(S.K.Keshote, J)

(Vipul)